

Local Government Accounting Issues Update

12th ANNUAL RUTGERS GOVERNMENTAL ACCOUNTING
& AUDITING UPDATE CONFERENCE

Friday, December 9, 2005

by

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What We Will Discuss

- **New Laws**
- **Policy Issues**
- **Pending Legislation**
- **Audit Issues**
- **Pay To Play**
- **Disclaimer: This presentation provides guidance from the Division, and is not designed to provide, nor should it be taken as legal advice to local entities and officials. As always, local governmental entities and officers should consult their legal counsel regarding compliance with laws and its application to particular circumstances.**

Recent Legislation – PL 2005

- **c. 212 – Construction Code Bidding**
 - **Requires contracts between local governments and 3rd party UCC inspection agencies to comply with "Local Public Contracts Law – i.e. subject to bidding**
 - **Replaces previous "2 envelope" system**
 - **DLGS is preparing guidance and model bid specifications**
 - **Not eligible for competitive contracting**
 - **Pricing continued to be based on percent of state set fees**

More Legislation

- **c. 198 - Long term Care Insurance**
 - **Requires State Treasurer to provide long term care insurance plan for local public employers to offer to employees and retirees at own expense.**
 - **Details are being worked out by Pensions and Benefits**
 - **There are some interesting issues with this for payments for retired employees**
 - **Will likely piggyback existing State LTC plan**

Some More Legislation

- **c.108 – Open Space Trust Fund Revenues**
 - **Allows county or municipality to deposit funds from any source into open space trust funds**
 - **Permits agreements with nonprofit organizations for to acquire land and historic antiquities**
 - **Will treat the Open Space budget page as a budget – listing revenues, balanced, and 159's for amendments. LFN coming on it**

Still More Legislation

- **c. 148 – Vote By Mail**
 - **Permits elections in municipalities with fewer than 500 residents to be conducted by mail.**
 - **AG to adopt standards**
- **c.84 – School Busing Competition**
 - **Requires public schools that use a regional school system to provide bussing to to competitively bid the service.**
 - **Other related transportation restrictions intended to promote control of bussing costs and competition.**

Even More Legislation

- **c. 67 - Value Engineering Requirements**
 - **Value engineering clause in specifications for construction contracts of public facilities, not budilings, in excess of \$5M.**
 - **Language in specs permitting contractor to submit alternate means that will reduce costs.**
 - **If approved by Governing Body, savings, approved by engineer are split 50/50**
 - **Local Finance Notice 2005-22 has details, model specification language**

Yet More Legislation

- **c.191 – Bid Amendment Notice**
 - Provides uniform, 7 day period for LPCL contracting entities to issue changes or addenda to bid advertisements
 - Business days – excludes holidays and weekends.
 - Newspaper ad indicating change in specs
- **c. 174**
 - Authorizes issuance of bonds for refurbishment of ambulances, rescue vehicles if refurbishment will extend the useful life of the vehicle for at least five years

DLGS Policy Issues

- **InFFO systems coming – electronic submission of budgets**
 - **Pilot program for CY 2005 for Meadowlands communities**
 - **If all goes well: SFY volunteers in SFY 2007, CY volunteers in CY 2007**
 - **Uses local spreadsheets**
 - **You can help – send us your spreadsheets: dlgs@dca.state.nj.us**

More Policy

- **CY 2006 Cap COLA rate: 4.5% - meaning maximum of 3.5% with ordinance over 2.5%**
- **Ethics requirement for all DLGS CEU certification programs: 2 credits per cycle**
- **Bid threshold and quote limit changes as of 7/1/05: LFN 2005-16**
 - **\$21,000/\$3,150**
 - **\$29,000/\$4,350**
- **Cap exception for DEP storm water permit activities – LFN 2005-7**

Audit Issues

■ **GASB OPEB**

- **Authorities and Fire Districts must comply on GASB schedule**
- **No State requirement for municipalities and counties anticipated: but footnote exceptions could result in another qualification of audit reports if not done. More to come on this next year**

■ **Coming guidance on audit standard for special units**

- **Libraries = OCBOA**
- **SID – it depends on structure**

■ **Investment policy reviews and reporting of non-standard investments in audit**

More Audit Issues

- **GAGAS – it applies to all units**
- **Other areas we are looking at:**
 - **Testing for employee benefit authorization and compliance**
 - **Basis for health benefit receipt**
 - **Policy on benefit accumulations**
 - **Retirement based leaves**
 - **Debt guarantees for non-profit organizations**
 - **AICPA regs: AFS preparation problems and material weaknesses**
- **CY 2006 budgets – anticipate late start due to State budget due date and impact on State aid**

Pending Legislation

- **Municipal cap amendments**
- **Some form of State procurement changes affecting cooperative purchasing**

For More Information...

- **DLGS Web Site:** www.nj.gov/dca/lgs
- **Public Contracts Info:**
 - www.nj.gov/dca/lgs/lpcl
- **DLGS News List Serve**
 - www.nj.gov/dca/lgs
 - **Link on left side to “DLGS News”**



Top 10 Things to Know About: **N.J. Local Unit Pay-To-Play Law**



Keys to Pay To Play:

- An agency cannot award a contract without using a public competition process to a contractor that...**
- is a contributor to a political party where a member of the party is serving in an elective public office of that municipality/county.**
- The contribution limitation covers the year prior to the award and bans contributions during the life of the contract.**



About the Law

- Chapter 19 of P.L. 2004 originally included the State Executive Branch
 - EO 134 and Chapter 51 of 2005 took them out and left municipalities, counties, and the legislature in it. Made other important wording changes.
 - Compiled at N.J.S.A. 19:44A-20.4 et seq.
- Enforced by ELEC – they handle contributions questions and complaints
- DLGS assigned to support affected governments and provide guidance



Who...

- **The law affects all county and municipal contracting units, regardless if their governing board is elected or not (i.e., includes authorities, boards, commissions).**
 - **Law cites: “instrumentalities and agencies”**
 - **Elected officials that appointed board members are “it” for agencies and instrumentalities.**



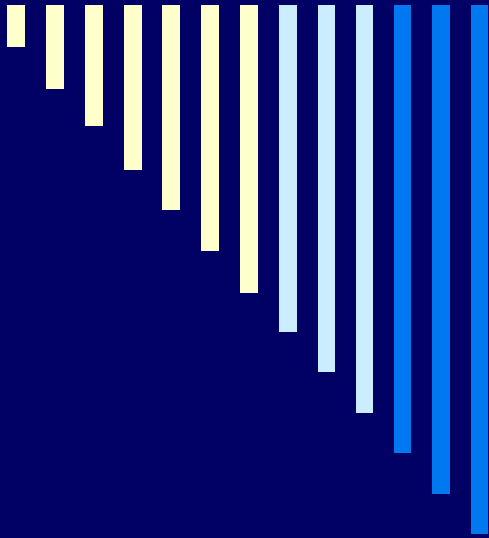
What Contracts Are Affected

- Covers contracts awarded after January 1, 2006**
- Contracts with a value over \$17,500**
 - Not linked to the agency's bid threshold**
 - Includes contracts with non-profits**
- It does not apply to contracts with:**
 - Other government agencies**
 - Banks, insurance companies, and regulated public utility services**



The general requirement is...

- **Covered contracts must be awarded through a “fair and open” or “non-fair and open” process. Includes:**
 - Competitive contracting
 - Professional services (lawyers, engineers, etc.)
 - Exempt from bidding (i.e., insurance and risk management, recycling, codification, etc.)
 - Extraordinary Unspecifiable Services (consultants)
 - Cooperative purchasing
- Does not supersede requirements for public bidding



Fair and Open Contracts



What's a Fair and Open Contract?

- ☐ **Announced in newspaper or on website**
 - **At least 10 days prior to opening**
- ☐ **Described in an RFP or RFQ**
 - **Must include description of award criteria**
- ☐ **Results publicly opened and announced**
- ☐ **Awarded by governing body**
- ☐ **Decision of agency on how to do it is final**



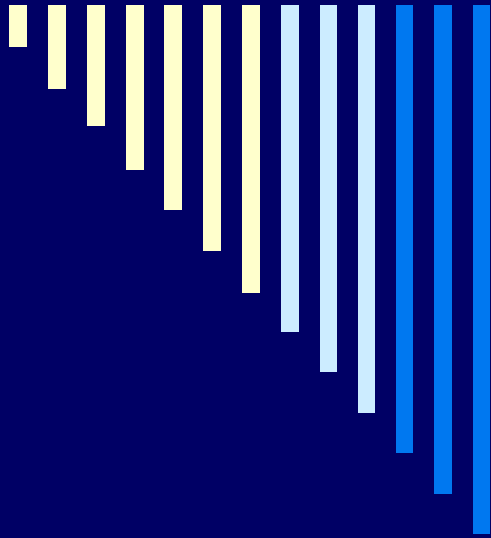
What about “normal” bidding?

- **“Normal” public bidding and competitive contracting are considered as a “fair and open” process under the law.**



What about “window” contracts?

- ☐ **Contracts over \$17,500 and less than the agency’s bid threshold...**
- ☐ **Must be done as a fair and open**
 - ☐ **Advertising**
 - ☐ **RFP**
 - ☐ **Sealed and opened publicly**
- ☐ **They must now be awarded by the governing body, not by the purchasing agent.**



Non-Fair and Open Contracts



Reportable Contribution Limits

- **A contractor receiving a non-fair and open contract cannot...**
- **Have made a contribution of more than \$300 to a political party or candidate committee of a member of the governing body for one year prior to the contract...**
- **...and during the life of the contract**
 - **PAC's are not covered.**



Vendors must certify...

- ☐ **For non-fair and open contracts, that they did not give reportable contributions to...**
- ☐ **...political party and candidate committees represented by people on the governing board...**
- ☐ **...that bar them from receiving a contract**



How does a contractor know who is covered?

- The governing body's clerk should obtain the names of them from the elected officials for Business Entity Disclosure forms to be prepared.**
- The information should be passed to all subordinate contracting units.**



What forms are needed to award a non-fair and open contract?

- ☐ **Determination of Value**
- ☐ **Business Entity Disclosure Certification of a contractor**
- ☐ **They must be on file prior to the time the contract is awarded.**



Contract Award Process

- **Resolutions for non-fair and open contracts require special disclosures above and beyond a traditional award resolution.**
 - **Sample in Guide book**



Some Explanations

- Emergency (exigency, non-competitive) contracts require State Treasurer's approval, but filing will probably be filtered through DLGS. Work is in progress on this.
- The \$17,500 threshold is subject to the principle of aggregation rules in NJAC 5:34-8.2, but based on the value of contracts to the same vendor instead of commodities.
- Local/State cooperative purchasing bid contracts affected only applies to the awarding agency.



2006 BONUS

- ☐ **Professional service contracts and other non-bid contracts awarded in 2006 are covered by the law...but**
- ☐ **Contributions made during 2005 are exempt!**
- ☐ **Business Entity Disclosure Form is still required**
- ☐ **The certification language covers contributions made on 2005.**
 - **“did not make contributions that would bar receipt of a contract”**



Audit Issues

- Auditors should test compliance starting with FY 2006 audits
- Risk assessment/testing for compliance
 - Was a fair and open or non-fair and open process used?
 - Is the appropriate documentation there?
 - No requirement to test validity of submissions.



For More Information:

- ❑ Web site with information:
 - www.nj.gov/dca/lgs/p2p
- ❑ On the contracting process contact the Division of Local Government Services at lpcl@dca.state.nj.us.
- ❑ For questions about contributions Contact the Election Law Enforcement Commission at: 888- 313-ELEC (3532).